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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/049,454	12/08/2004	Andreas Brun	MPF 001	3883
39648 7590 09/11/2007 ANDREW F. YOUNG, LACKENBAUGH SIEGEL, LLP ONE CHASE ROAD SCARSDALE, NY 10583			EXAMINER TRETTEL, MICHAEL	
			ART UNIT 3673	PAPER NUMBER
			MAIL DATE 09/11/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/049,454

Applicant(s)

BRUN, ANDREAS

Examiner

Michael Trettel

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12, 14, 15 and 17-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17-29 is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 8-12, 14 and 15 is/are rejected.
- 7) ☒ Claim(s) 5, 7 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>06/29/07</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the waterproof flap and zipper of claims 6 and 7 must be shown or should be cancelled from the claims.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The amendments filed 02/12/2002 and 06/29/2007 are objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the attachment of the permanent attachment (i.e., the zipper flap) by sewing as set forth in claim 6, the waterproof seam of claim 6, the impregnated thermoplastic material of claims 8 and 10, and the perforated sheet material of claim 12. The original translation filed on 02/12/2002 which is a direct translation of the PCT application does not support any of the above elements. See, in particular, page 2, lines 11-14 for the description of the waterproof zipper construction; page 2, lines 15-20 for the description of the thermoplastic materials used to form the shell and attachment strips, and page 2, lines 22-24 for the description of the materials used to form the dividing walls.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 6 and 8-12 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed

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invention. This is a new matter rejection based upon the objection to the specification set forth above.

Claim Rejections - 35 USC § 102

Claims 1-4, 8-12, 14, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Kikuchi et al (US 5,483,713). Kikuchi et al shows a seamless quilt construction 40 of particular interest. The quilt comprises an upper and lower layers 22, 23 of textile material which are attached to one another by an edge binding 30. Baffle formed by partition walls 41 are attached between the upper and lower layers 22, 23 and serve to divide the interior of the quilt into filling compartments. Each wall is formed by two segments 41a, 41c attached by sewing 45 along a midline, with reinforcing strips 42a, 42b being sewn to the ends 41b, 41d of the wall. The binding strip has an adhesive coating applied to the side that engages the upper and lower layer of the quilt, with the adhesive being fixed by a heat application. Note the materials specified in column 5, lines 3-36 for use in the quilt. In addition note that Kikuchi et al specifies in column 6, lines 34-36 that the "two sheets 2, 23 may be made of fabric materials known in the quilt industry". Such materials include fabrics such as nylon, polyester, treated or coated cotton textiles, and so forth many of which have waterproof properties while still being air permeable. Layer 23 can be considered as forming an inner shell of a sleeping bag, while layer 22 can be considered to form an outer shell of the bag.

Response to Arguments

Applicant's arguments filed on June 29, 2007 have been fully considered but they are not persuasive.

The arguments presented against the new matter objection are unpersuasive. Arguments that allege that the newly added material are broadly supported by the disclosure as a whole, or that the newly added material is common in the art and therefore well known, do not address the issue of adequate disclosure and support of the newly added subject matter. Briefly put, the applicant should be able to specifically point out in the original disclosure where each and every item claimed is supported by the original disclosure. The original disclosure can be easily understood from reading the translated specification filed on 02/12/2002, it is brief and to the point as to what is disclosed and what is not. The examiner has pointed out the specific areas in the original disclosure where the subject matter objected to as presenting new matter is best disclosed. Since these limitations present in the claims are not present in the original disclosure, nor are they reasonably supported by the original disclosure they set forth new matter. The new matter objection to the amendments has been repeated.

The argument presented against the §112 rejection is unpersuasive. The applicant has stated that the basis of the rejection is unclear, yet it is clearly stated at the end of the paragraph setting forth the rejection that "This is a new matter rejection based upon the objection to the specification set forth above". The examiner is at a loss as to how the applicant could not understand what the §112 rejection is based upon, and notes that it should be unnecessary to repeat the entire objection to the specification earlier presented since this would simply be

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redundant. Simply put, the new matter objection to the specification is the basis for the §112 rejection.

With respect to the argument that Kikuchi does not show the use of a waterproof material to make the layers 22, 23 of the quilt, the examiner has pointed out that Kikuchi expressly suggests the use of fabric materials known to the quilt industry. This means that a vast range of well known stock materials commonly used in bedding would be used to make the layers 22, 23, many of which have waterproof properties. As an example, nylon is a well known stock material commonly used to make bedding and clothing. Depending upon the tightness of the weave and the surface finish used during the manufacture of the nylon material such a material is waterproof and/or water resistant, and yet still air permeable. The term "waterproof" as used in the claims is not absolute, since this allows for a range of varying types of behavior when exposed to moisture. Nylon commonly causes water to bead when first applied to the fabric since it is hydrophobic in nature, and even when saturated it quickly dries due to its hydrophobic nature. In addition the applicant is simply incorrect in asserting that air-permeable textile materials are antithetical to being waterproof. There is a large range of textile materials available which are both absolutely waterproof and yet still pass water vapor and air, the best known of which is the material sold under the Gore Tex trademark. Nylon also possesses such behavior, to a much smaller degree. Finally, the examiner notes that the assertion that the cover sheets 22 and 23 must be air permeable is in fact incorrect, the air permeable material referred to in column 5, lines 15 and 16 of Kikuchi is used to make the mating strips 31. These strips are used to form barriers between the chambers of the quilt and not the upper and lower layers 22, 23 of the quilt.

Allowable Subject Matter

Claims 17-29 are allowed.

Claims 5 and 7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

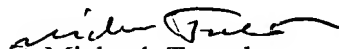
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Trettel whose telephone number is (571) 272-7052. The

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examiner can normally be reached on Monday, Tuesday, Thursday, or Friday from 7.30 am to 5.00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Engle, can be reached on (571) 272-6660. The fax phone number for the organization where this application or proceeding is assigned is (571)-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.



Michael Trettel
Primary Examiner
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